THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.7450 of 1995

Dated 04-08-2006

Between:
Dasari Radha Krishna & others.

..... PETITIONERS

AND

The Director of Technical Education, Govt. of A.P. Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.7450 of 1995

O R D E R:

This writ petition is filed, by employees of the third respondent-school, challenging the resolution dated 03-03-1995 of the third respondent-school and the consequential order dated 21-03-1995 of the fifth respondent, whereby they were dismissed from service, as arbitrary, illegal, in violation of principles of natural justice, in violation of sections 79 and 83 of the Andhra Pradesh Education Act and in violation of Articles 14 and 21 of the Constitution of India, and for a consequential direction that they be reinstated into service with all consequential benefits.

Facts, in brief, are that the third respondent-school was established by a registered society, running several other institutions also. The third respondent-school has been recognized by the Government of Andhra Pradesh and follows the syllabus prescribed by the Central Board of Secondary Education. The first petitioner was appointed as an attender, in the Civil Engineering Department, on *ad hoc* basis, and was subsequently, by order dated 09-02-1988, posted in the third respondent-school. The petitioner joined the third respondent-school and worked there till 01-10-1994. The second petitioner was appointed as a clerk-cum-typist on 02-12-1987. By order dated 01-10-1994, both the petitioners along with Smt D.S.R.Lakshmi were suspended, pending enquiry on the ground that during the annual audit, it was pointed out that they were involved in misappropriation of funds in the third respondent-school. The petitioners submitted their explanation on 05-10-1994 and 08-10-1994 stating that they were not concerned and had nothing to do with the

alleged misappropriation. The fifth respondent rejected their request and informed them that Sri V.Sita Rama Rao had been appointed as an Enquiry Officer. Smt D.S.R.Lakshmi, who admitted her guilt, was reinstated into service and her suspension revoked. The petitioners herein, in their representation dated 17-10-1994 informed the fifth respondent of their apprehension that Sri V.Sita Rama Rao, an employee of the institute, may not conduct the enquiry properly as he would obey the dictates of the managing committee. While matters stood thus, the enquiry officer issued charge memo dated 04-11-1994, which was served on the petitioners within a week thereafter. The petitioners submitted their representations, on 14-11-1994 and 11-11-1994 respectively, requesting for change in the enquiry officer. The fifth respondent, however, did not take action pursuant thereto and there was no change in the enquiry officer. The enquiry officer is said to have informed the petitioners vide letter dated 23-11-1994, (which the first petitioner is said to have received on 29-11-1994), that the enquiry would be conducted on 28-11-1994 from 10.30 A.M. onwards. On receipt of the said letter dated 23-11-1994, the second petitioner submitted his representation to the enquiry officer on 24-11-1994 requesting for postponement of the enquiry till receipt of orders of the fifth respondent. The first petitioner is also said to have made a similar representation on 30-11-1994 requesting for postponement of the enquiry. It is alleged that, during the pendency of the enquiry, the fifth respondent did not pay subsistence allowance to the petitioners herein. According to the petitioners, after receipt of the enquiry officer's letter dated 23-11-1994, they did not receive any communication either from the enquiry officer or the fifth respondent and they were under the impression that the enquiry officer had postponed the enquiry till a decision was taken by the fifth respondent on their representations for change in

the enquiry officer. The petitioners received show cause notice dated

12-12-1994 from the fifth respondent, along with the report of the enquiry officer, stating that the managing committee of the third respondent-school had accepted the report of the enquiry officer and that it proposed to impose on them the punishment of dismissal from service. The petitioners were called upon to submit their objections to the proposed punishment. The petitioners submitted their objections on 02-01-1995 requesting that the proposed punishment be dropped. They contended that the enquiry conducted by the enquiry officer was vitiated as there was no evidence against the petitioners, and that imposition of capital punishment of dismissal from service was unnecessary. The fifth respondent, by order dated 21-03-1995, dismissed the petitioners from service pursuant to the resolution passed on 03-03-1995 by the managing committee of the third respondent-school. According to the petitioners the resolution dated 03-03-1995, and the consequential order of the fifth respondent dated

21-03-1995, is in violation of Sections 79 and 83 of the Andhra Pradesh Education Act, 1982 (for short 'the Act') and Article 14 of the Constitution of India. Petitioners would contend that the impugned order was passed without any evidence on record to establish the charges of misconduct and that the punishment imposed was grossly excessive. According to the petitioners, though they represented for change of the enquiry officer the fifth respondent, without passing any orders on their representations, dragged on the matter till the enquiry was completed. Petitioners would submit that the enquiry officer had acted *mala fide* and in a biased manner and had conducted the enquiry behind their back without giving them reasonable opportunity of being heard.

Petitioners would contend that the enquiry officer had not followed the mandatory provisions of the Act in conducting the enquiry, and submitted his report to the management. According to the petitioners while they were dismissed from service, the managing committee of the third respondent-school had exonerated Smt D.S.R.Lakshmi and had reinstated her into service despite the fact that she had accepted her guilt in the enquiry and the enquiry officer had also found her guilty of the charges. Petitioners would plead that the respondents had discriminated in imposition of punishment for the same offence. They would also contend that prior approval of the competent authority, under Section 79 of the Act, ought to have been taken before final orders were passed by the respondents and that the impugned order of punishment is vitiated on the ground that prior approval of the competent authority had not been obtained. Reference is made to the earlier writ petition filed before this Court in W.P.No.4600 of 1994 and the fact that this Court, by order dated 10-03-1995, had directed the respondents to pay subsistence allowance to them. Petitioners would contend that the charges framed against them, by the enquiry officer, is that they had committed misconduct in falsification of accounts and misappropriation of school funds. According to the petitioners, they had categorically stated in the explanation given by them, to the show cause notice, that they were not concerned with the charge and that they had acted only on the instructions of the principal, who was their superior and it was the principal alone who was responsible and not the petitioners herein.

A counter affidavit is filed on behalf of respondents 3 to 6, wherein it is stated that the provisions of the Andhra Pradesh Education Act have no application to their institution and the writ petition is not maintainable. It is stated that the petitioners were working as employees in the third respondent-school and, in the

annual audit, it was found that they had misappropriated Rs.21,260/-, had indulged in falsification of accounts and that the petitioners had agreed to pay the amount but ultimately failed to do so. The petitioners were placed under suspension pending enquiry. An enquiry was directed against them, to enquire into charges of misappropriation of funds and falsification of accounts, and a retired subordinate judge was appointed as an enquiry officer to conduct a detailed enquiry. The said enquiry officer framed charges against the petitioners, charge memos were served on them and an enquiry was conducted thereafter affording ample opportunity to the petitioners to defend themselves. The petitioners, however, did not participate in the enquiry in spite of repeated reminders. The enquiry officer concluded the enquiry and held that the charges levelled against the petitioners were established. A show cause notice was issued proposing the punishment of dismissal from service, the petitioners were called upon to submit their objections thereto, and since their explanation was found unsatisfactory, final orders were passed on 21-03-1995 dismissing them from service. According to the respondents, since the third respondent-school is affiliated to the Central Board of Secondary Education, the service conditions of its employees are governed by the Central Board of Secondary Education Rules and the A.P. Education Act, 1982 has no application.

According to the respondents, petitioners were afforded adequate and reasonable opportunity to submit their explanation to the charges levelled against them and, instead of participating in the enquiry and presenting their case, the petitioners had requested for change of the enquiry officer making false and baseless allegations against him. Respondents would contend that the enquiry officer could not be changed at the whims and fancies of the petitioners and

in spite of the fact that the petitioners were informed, vide letter dated 23-11-1994, that an enquiry would be held they did not choose to participate and the enquiry officer had no alternative but to proceed with the enquiry. It is stated that the managing committee, being satisfied with the enquiry report and accepting the findings recorded therein, proposed the punishment of dismissal from service. It is stated that since the petitioners failed to avail the opportunity given to them, they are estopped from challenging the validity of the enquiry proceedings. It is stated that since the provisions of the Andhra Pradesh Education Act are not applicable and the third respondent-school is recognized by the Central Board of Secondary Education, the writ petition as filed is not maintainable. Allegations of *mala fide* and bias on the part of the enquiry officer are denied. It is stated that the petitioners herein had been afforded reasonable opportunity to present their case, sufficient time had been given to them to submit their explanation and, since the petitioners did not avail the opportunity, they were estopped from questioning the action of the enquiry officer in proceeding with the enquiry. According to the respondents, the petitioners' case is not similarly situated to that of Smt D.S.R.Lakshmi. It is stated that during the enquiry, Smt D.S.R.Lakshmi accepted her guilt, expressed her unconditional apology, assured that she would not commit any irregularity in future and she made good the loss caused to the institution. The petitioners, on the other hand, neither accepted their guilt during the enquiry nor did they submit any satisfactory explanation to the show cause notice. It is stated that the appropriate action to be taken against delinquent employees is the prerogative of the management and that it was not open for the petitioners to dictate the manner in which such a power was to be exercised. Respondents would state that, since they are not

governed by the Andhra Pradesh Education Act, the question of taking approval of the competent authority did not arise.

Insofar as payment of subsistence allowance is concerned, it is stated that in compliance with the interim orders of this Court, the petitioners were paid subsistence allowance. It is stated that the petitioners were found guilty of misappropriation of funds and falsification of accounts, and since the issues involved loss of confidence, the petitioners were not entitled to the relief prayed for.

The first question, which arises for consideration, is as to whether the writ petition is maintainable.

Sri Tuhin Kumar, learned counsel appearing on behalf of the petitioners, would refer to the provisions of Section 79 of the A.P. Education Act, whereunder no teacher or member of the non-teaching staff employed in any private institution shall be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The proviso to Section 79 provides that no order of dismissal shall be passed under sub-section (1) against an employee without the prior approval of such authority or officer as may be prescribed for different classes of private institutions. Learned counsel would contend that, since prior approval of the competent authority had not been obtained before passing the impugned order of punishment, the order of dismissal, passed against the petitioners herein, was a nullity and *ab initio void*.

Sri A.Veera Swamy, learned counsel for the respondents, on the other hand, would submit that the third respondent–school is run by a registered society and since the third respondent-school is affiliated to and imparts education on the syllabus prescribed by the Central Board of Secondary Education, it is governed by the rules

applicable to the institutions affiliated to the Central Board of Secondary Education, and that the provisions of the A.P. Education Act are not applicable. Learned counsel would submit that, inasmuch as the provisions of the A.P. Education Act have no application to the third respondent-school, section 79 thereof also would have no application, and consequently the third respondent-school was not obligated to obtain prior approval of the competent authority under proviso (1) to section 79 of the A.P. Education Act before imposing the punishment of dismissal from service on the petitioners. Learned counsel would refer to the Central Board of Secondary Education "Affiliation Bye-laws" wherein under clause 2(1)(i) "Affiliation" has been defined to mean formal enrolment of a school among the list of approved schools of the Board following the prescribed/approved courses of studies up to class VIII. Under sub-clause (iii) "Board" is defined to mean the Central Board of Secondary Education. Under sub-clause (ix), "School Management Committee" has been defined to mean the committee managing the school. Under sub-clause (xvi) "Institution" has been defined to mean an educational institution affiliated to the Board. Under sub-clause (xx), "No objection Certificate" has been defined to mean a letter issued by the appropriate authority of the Education Department of the State, in respect of the School situated in the State, for affiliation of the school to the Central Board of Secondary Education. Under sub-clause (xxii) "Private Unaided School" has been defined to mean a school run by a Society registered under the provisions of the Central/State Acts not getting any regular grant-in-aid from any Government sources. Under sub-clause (xxix) "Teacher" has been defined to mean a person in the employment of an institution affiliated with the Board for teaching purposes. Learned counsel would refer to norms for affiliation in rule 3 thereof, and to Chapter

VII of the affiliation bye-laws which prescribes the services rules for employees. Under clause 24(1) thereof, every school affiliated or to be affiliated with the Board is required to frame rules for its employees as per the provisions of the A.P.Education Act, if the Act required adoption of the same obligatory, otherwise as per the Service Rules given in the subsequent sections. Clause 24(2) requires a service contract to be entered into with each employee as per the provisions of the Education Act of the State or as given in Appendix III, if not obligatory as per the State Education Act. Clause 42 prescribes the Code of Conduct for employees and under sub-clause (1) thereof, every employee shall be governed by the Code of Conduct and among the acts which constitute breach thereof are clause (vii) relating to embezzlement of funds or misappropriation of school property or theft or fraud and clause (viii) mutilation/destruction of school records and property. Clause 44 relates to disciplinary procedure and under sub-clause (1) thereof, the school Managing Committee is empowered to place an employee under suspension if he/she is charged with embezzlement. Under clause 44(2), no order for suspension shall remain in force for more than six months unless the Committee, for reasons to be recorded by it in writing, directs the continuation of suspension beyond the period of six months. Clause 44(9) relates to payment of subsistence allowance. Clause 45 prescribes the penalty and among the penalties prescribed under sub-clause (1)(b)(iii) thereof, is removal from service, which shall not be a disqualification for future employment in any school run by the Society. Clause 47 prescribes the procedure for imposing major penalties and under sub-clause (2) thereof, no order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Committee. The Committee referred to in clause

47(2) is the 'Committee', defined in clause 2(ix) as managing the school. According to the learned counsel, clause 47(2) of the "Affiliation Bye-laws" of the Central Board of Secondary Education merely requires the disciplinary authority to obtain prior approval of the managing committee of the school for imposition of a major punishment. In the case on hand, it was only after the managing committee had passed the resolution on
03-03-1995, that the punishment was imposed on the petitioners herein by the fifth respondent on 21-03-1995. As such, clause 47(2) of the "Affiliation Bye-laws" of the Central Board of Secondary Education has been complied with.

As noted above, Chapter VII of the Affiliation Bye-laws of the Central Board of Secondary Education, more particularly clause 24(1), stipulate that Schools, affiliated to the Central Board of Secondary Education, shall frame Service Rules for its employees as per the Education Act of the State. As such, the Central Board of Secondary Education bye-laws do not exclude the provisions of the Andhra Pradesh Education Act. Section (1)(3) of the Andhra Pradesh Education Act, 1982 provides that the Education Act shall apply to all educational institutions except:-

(i) institutions for scientific or technical education financed by the Central Government and declared by Parliament by law to be institutions of national importance;

(ii) institutions established or maintained and administered by, or affiliated to, or recognized by the Andhra Pradesh Agricultural University and the Jawaharlal Nehru Technological University;

(iii) colleges and institutions insofar as the matters pertaining to them are dealt with in the enactments, relating to the establishment of Universities in force in the State, including the University of Hyderabad Act, 1974.

(iv) Educational institutional imparting intermediate education insofar as the matters pertaining to them are dealt with in the Andhra Pradesh Intermediate

Education Act, 1971.

The Andhra Pradesh Private Institutions Employees (Disciplinary Control) Rules, 1978 were made, in exercise of the powers conferred under Sections 79, 80 and 83 of the A.P. Education Act. Rule 1(2) provides that the said rules shall apply to employees of all private educational institutions.

The third respondent-school, a private unaided educational institution, affiliated to the Central Board of Secondary Education does not fall under any one of the four exempted categories and as such the provisions of the Andhra Pradesh Education Act are applicable. The contention urged on behalf of the respondents, that the writ petition as filed is not maintainable, must therefore fail. In this context, the Division Bench of this Court in **Vasavi College of Engineering v. A. Suryanarayana**[1], observed:-

> ".....Chapter XIV of the Act deals with "payment of salaries and allowances to and disciplinary action against employees of private institutions". Chapter XV deals with their welfare and code of conduct and rules of conduct of the employees of educational institutions". Dismissal, removal or reduction in rank or suspension etc. of employees of private institutions are governed by Section 79 of the Act. Section 80 provides for appeals against orders of punishment imposed on employees of private institutions under Section 79. A further appeal is provided to Government under Section 81 subject to special provision regarding appeal in certain past disciplinary cases as provided under Section 82. Power is granted to prescribe the manner of payment of pay and allowances of employees of private institutions in Section 84 of the Act. Insofar as the Act contains provisions relating to service conditions of teachers and other employees of the educational institutions, we have to give meaning to such provisions as intended to ameliorate the conditions of service of such employees. We have therefore, to understand such provisions in the same manner as the ameliorative/welfare statutes are interpreted. On a careful scrutiny of these provisions we are of the opinion that the teachers and other employees are entitled to seek enforcement of their statutory rights against the management by approach of this court

under Article 226 of the Constitution of India.

We have therefore no hesitation to hold that the private institutions who have statutory duties to perform and whose orders are subject to scrutiny by public authorities by reason of statutory provisions are subject to jurisdiction that this court is competent to entertain a complaint of violation of statutory obligations on the part of the managements of private institutions, and that it is competent for the High Court to enforce such obligations by mandamus or quash the offending orders of Certiorari……"

As such, if the third respondent-school is held to have violated any of the statutory provisions of the Andhra Pradesh Education Act or the rules made thereunder, the mere fact that it is a private unaided institution would not disentitle its employees from invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

The next question which is therefore required to be considered is whether Section 79 of the Andhra Pradesh Education Act has been violated.

Section 79 of the Andhra Pradesh Education Act, 1982 reads as under:

Sec.79. Dismissal, removal or reduction in rank or suspension, etc., of employees of private institutions:--

(1) No teacher or member of the non-teaching staff employed in any private institution (hereinafter in this Chapter referred to as 'the employee') shall be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

[Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of a minority educational institution without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions;

Provided further that the management may prefer an appeal against any order of the Officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed.]

(Added by Act 27 of 1987)

(2) An inquiry under sub-section (1) shall be completed within a period of two months from the date of communication of charges against the employee.

(3) (a) No employee shall be placed under suspension except when an enquiry into the gross misconduct of such employee is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not started and completed within that period, such employee shall, without prejudice to the inquiry, be deemed to have been restored as employee :

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for reasons directly attributable to such employee.

(4) Every such employee as is placed under suspension under sub-section (3) shall be paid subsistence allowance at such rates as may be prescribed during the period of his suspension.

(5) Before imposing any penalty, other than the penalties specified in sub-section (1), an employee shall be informed in writing of the allegations on which action is proposed to be taken and be given an opportunity of making a representation, but it shall not be necessary to hold an oral inquiry into such allegations.

It is not in dispute that prior approval has not been obtained before the punishment of dismissal from service was imposed on the petitioners herein. Sri A.Veera Swamy, learned counsel for the respondents, would, however, submit that inasmuch as during the period when the services of the petitioners were terminated, consequent upon imposition of punishment of dismissal from service, vide proceedings dated 21-03-1999, no competent authority was specified from whom prior approval was required to be taken, the third respondent-school could not be faulted for not obtaining prior approval, and that they have not violated the statutory requirements of Section 79(1) of the Act. Learned counsel would submit that the Andhra Pradesh Private Institutions Employees (Disciplinary Control) Rules, 1983 (for short 'the Rules') notified in G.O.Ms.No.467, dated 03-11-1983 did not prescribe the competent authority and under Rule

3 of the Rules, while the Regional Joint Director was the competent authority, the said rule came up for consideration in **Sri Vani Upper Primary School v. Secretary to Government Education Department, Hyderabad**[2] and the Division Bench of this Court held that the Regional Joint Director could not be held to be the competent authority as he was the appellate authority under the rules. Learned counsel would submit that while the earlier rules in G.O.Ms.No.467, dated 03-11-1983 were superseded by the rules notified in G.O.Ms.No.1, dated

01-01-1994, Rule 3 thereof which prescribes the competent authority was inserted vide G.O.Ms.No.377, dated 17-11-1997 in compliance with the orders of the Division Bench of this Court in **Sri Vani Upper Primary School**[2]**.** Learned counsel would submit that since the amendment of the rules prescribing the competent authority in G.O.Ms.No.377, dated 17-11-1997 is prospective in its application, the petitioners having been dismissed from service earlier vide proceedings dated 21-03-1995, the subsequent amendment to Rule 3 of the Rules would have no application. Learned counsel would contend that, since on the date on which the order of dismissal was passed, there was no competent authority, to grant prior approval for imposition of the punishment of dismissal, the third respondent-school could not have obtained prior approval as required under section 79 (1) of the Act.

Sri Tuhin Kumar, learned counsel for the petitioners, on the other hand, would submit that since the Division Bench judgment in **Sri Vani Upper Primary School**[2]**,** had been taken note of in subsequently amending the rules, which had been introduced to clear the earlier ambiguity, the amendment would apply from the date on which the original rule existed and when so read, the amendment to Rule 3 of the Rules, as notified in G.O.Ms.No.377, dated 17-11-1997,

must be deemed to have been in force ever since the rules were made and notified in G.O.Ms.No.1, dated 01-01-1994 and as such must be held to have been in force when the punishment of dismissal from service was imposed on the petitioners herein. Learned counsel would submit that since the competent authority to grant approval must be deemed to have been in existence on the date on which the punishment was imposed on the petitioners herein, failure on the part of the third respondent-school to obtain prior approval would render the punishment imposed illegal and *ab initio* void. Learned counsel would place reliance on two Division Bench judgments of this Court in **Loyala Academy Junior College v. State of A.P.**[3] and **Tagore Home Junior College, Secunderabad v. P.P.A.Christian**[4].

In order to examine the rival contentions in this regard, it is necessary to take note of what has been held by the Division Bench of this Court in **Sri Vani Upper Primary School**[2]**.** The Division Bench, after extracting section 79 of the Andhra Pradesh Education Act, observed:-

> ".....Rules have been framed called the Andhra Pradesh Private Institutions Employees (Disciplinary Control) Rules, 1983 and a prescription under Rule 3 therein is made in respect of the functions of the competent authority under Sections 79, 80 and 83 of the Act of 1982. Proviso to Section 79 (1) aforequoted, however came into force with effect from 01-06-1987. Long prior to the introduction of the proviso, however, the rule aforementioned existed and no separate rules were issued by the State Government so as to take care of the proviso by naming the authority or officer whose prior approval was/is required for passing an order of dismissal, removal or reduction in rank against an employee by a private educational institution. In more than; one judgment starting from *Rev. Joseph Thumma v. Distraict Educational Officer, 1995 (2) An.W.R. 117, lincluding a judgment by the learned single Judge in V.Ramakanta Sarma v. Adarsha Vidya Samithi,*1996 (2) ALD 339 = 1996 (2) ALT 47, who has delivered the impugned judgment, this Court has

considered the effect of the proviso aforementioned and the State Government's not prescribing the authority or; officer whose prior approval is required for passing an; order ;of dismissal, removal or reduction in; rank against an employee by a private educational institution……..."

"……..One of the settled principles of law is that a rule which has existed from before and is not in conflict with a provision which is subsequently introduced in the Act and it embraces the purpose for which the new provision is introduced the same can be followed and applied to avoid any ambiguity or to remove the defect in the law. If the above is applied and Section 79 as mentioned in Rule 3 of the A.P. Private Institutions Employees (Disciplinary Control) Rules, 1983 is taken to be supplemented by the rule it can be inferred that the competent authority for the purposes ;of the proviso under Section 79 (1) of the Act is the authority named under the rule. The other possible view, however, is one which has been taken by the learned single Judge in *V.Ramakanta Sarma,* supra, and it for more than one reason can be said to be a reasonable view. If it is held that the competent authority who is named under Rule 3 of the A.P. Private Institutions Employees (Disciplinary Control) Rules, 1983 is the authority for the purposes of the proviso under Section 79 (1) the result would be that the approving authority of the action of the management of the school would become the appellate authority against his own action. It would serve rather better the interest of the employee if the action of the management is subjected to an appeal instead of and any interpretation of the Act and the rules which would render the appellate authority incompetent be avoided. The view taken in *V.Ramakanta Sarma,* supra, thus is beneficial to the employee. It is also a well considered principle that if two views are possible and; one view has already been taken by the Court or a Judge ;of the Court, then only because another view is also possible, any other Judge ;or the appellate Court would not find fault with such view of the Court or Judge. We are inclined in the instant case thus to approve the view in *V.Ramakantha Sarma,* supra, as a reasonable view and decline to pursue further investigation as to the validity of the other view……."

I n **V.Ramakanth Sarma v. Adarsha Vidya Samithi**[5], this Court held that the competent authority to perform the functions under Sections 79, 80 and 83 of the Act was the appellate authority under Rule 3 of the Rules, such an authority must be different from

the authority contemplated by the proviso to section 79(1) for the purpose of granting or refusing prior approval for an order of dismissal from service. This judgment in **V.Ramakanth Sarma**[5], fell for consideration before the Division Bench in **Sri Vani Upper Primary School**[2]**,** and it is in this context that it was held that, since the view taken in **V.Ramakanth Sarma**[5] was a possible and reasonable view, no other judge or the appellate Court could find fault with the view taken by this Court in **V.Ramakanth Sarma**[5]. The Division Bench held that, in the instant case, they were inclined to approve the view in **V.Ramakanth Sarma**[5] as a reasonable view. I see no reason to take a view different from the judgment of this Court in **V.Ramakanth Sarma**[5]. As per Rule 3 of the Rules, the Regional Joint Director is the competent authority for exercising powers under Section 79, 80 and 83 of the Act and since section 80 of the Act provides for appeals against the orders of punishment, the very authority which is empowered to hear the appeals, in the absence of a clear stipulation in this regard, cannot be said to be the authority to grant approval under Section 79(1) of the Act.

Sri Tuhin Kumar, learned counsel for the petitioners, would point out that even subsequent to the amendment to the rules in G.O.Ms.No.1, dated 01-01-1994, vide G.O.Ms.No.377, dated 17-11-1997, the Regional Joint Director for School Education continues to be the competent authority. Consequent to the amendment to Rule 3, vide G.O.Ms.No.377, dated 17-11-1997, the Regional Joint Director has been specifically designated as the authority/officer under Sections 79(1) and 80 of the Act. It is necessary to note that while the authority prescribed to exercise the functions under Section 79(1) of the Act, in so far as secondary schools, high schools and secondary schools sections in Junior Colleges are concerned, is the

Regional Joint Director, the appellate authority, under Section 80 of the Act, is now the Director of School Education. It is not as if the very same authority exercises functions both under Sections 79(1) and 80 of the Act. The contention of Sri Tuhin Kumar, learned counsel for the petitioner, that no change has been brought about, consequent upon the amendment to Rule 3 vide G.O.Ms.No.377, dated 17-11-1997, does not merit acceptance. This question did not arise for consideration either in **Loyala Academy Junior College**[3] or in **Tagore Home Junior College, Secunderabad**[4] and as such the said judgments have no application. During the relevant period, when the punishment of dismissal from service was imposed on the petitioners by the third respondent-school, since the competent authority, whose prior approval was required to be taken under Section 79(1) of the Act, was not prescribed, failure on the part of the third respondent-school to obtain prior approval cannot be said to be in violation of Section 79(1) of the Act.

The Division Bench, in **Sri Vani Upper Primary School**[2], held that, in any event, there was right of appeal provided under the Andhra Pradesh Education Act to employees of Private Unaided Educational Institutions against the orders of punishment imposed on them. The Division Bench permitted the petitioner therein to prefer an appeal, notwithstanding the period of limitation, and held that in case such an appeal was preferred within 15 days from the date of receipt of the order, the appellate authority would entertain the same and dispose of the appeal on merits.

The submission of Sri Tuhin Kumar that a similar direction be issued in the present case must, therefore, be accepted. Sri A.Veera Swamy, learned counsel for the third respondent-school, would however place a copy of G.O.Ms.No.58, dated 13-07-2006, whereunder Rule 12(7) of the Rules in G.O.Ms.No.1, dated 01-01-

1994, has been amended providing that the service conditions of unaided teaching and non-teaching staff shall be contractual in nature between the educational agency and the appointee, and that disputes, if any, in this regard shall be adjudicated in a civil Court of competent jurisdiction. Learned counsel would submit that since, as on date, the amendment to the rules in G.O.Ms.No.58, dated 13-07-2006, has come into force the situation, which prevailed when the Division Bench in **Sri Vani Upper Primary School**[2]**,** had permitted the appellant therein to prefer an appeal under Section 80 of the Act, no longer exists.

I am inclined to follow the Division Bench judgment of this Court in **Sri Vani Upper Primary School**[2]**,** and permit the petitioners herein to prefer an appeal within 15 days from the date of receipt of a copy of this order. In case, such an appeal is preferred within the aforesaid stipulated period, the second respondent shall forward the appeal to the Director of School Education, the competent authority to hear appeals under Section 80 of the Act read with rule 3 of G.O.Ms.No.1, dated 01-01-1994, within two weeks thereafter, and on receipt of such an appeal, the Director of School Education, shall consider the same, in accordance with law, and pass appropriate orders within two weeks thereafter. Needless to state that since the third respondent-school would also be a party interested, it shall be put on notice and given an opportunity of being heard. It is left open to both the parties to raise all such contentions as are available to them in law before the Director of School Education.

The Writ Petition is disposed of accordingly. No order as to costs.

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04-08-2006

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[1] 1991(3) Alt 335

[2] 1999(1) ALD 260 (DB)

3 1995(3) ALD 93 (DB)

4 2001(3) ALD 742 (DB)

5 1996(2) ALD 339=1996(2) ALT 47